

## National Science Foundation

## § 681.45

the ALJ will forward the record of the proceeding to the authority head.

### **§ 681.38 What happens if an initial decision is appealed?**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

### **§ 681.39 Are there any limitations on the right to appeal to the authority head?**

(a) A defendant has no right to appear personally, or through a representative, before the authority head.

(b) There is no right to appeal any interlocutory ruling.

(c) The authority head will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the defendant demonstrates to the satisfaction of the authority head that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the authority head may remand the matter to the ALJ for consideration of the additional evidence.

### **§ 681.40 How does the authority head dispose of an appeal?**

(a) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The authority head will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

### **§ 681.41 What judicial review is available?**

31 U.S.C. 3805 authorizes judicial review by the appropriate United States District Court of any final NSF decision imposing penalties or assessments, and specifies the procedures for such

review. To obtain judicial review, a defendant must file a petition with the appropriate court in a timely manner.

### **§ 681.42 Can the administrative complaint be settled voluntarily?**

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle the case from the date on which the reviewing official is permitted to issue a complaint until the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle the case from the date of the ALJ's initial decision until initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle the case while any judicial review or any action to recover penalties and assessments is pending.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate.

### **§ 681.43 How are civil penalties and assessments collected?**

Section 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

### **§ 681.44 Is there a right to administrative offset?**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered, or any amount agreed upon in a compromise or settlement, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

### **§ 681.45 What happens to collections?**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the

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United States, except as provided in 31 U.S.C. 3806(g).

### § 681.46 What if the investigation indicates criminal misconduct?

(a) Any investigating official may:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under any other statutory authority.

(b) Nothing in this part limits the requirement that NSF employees report suspected violations of criminal law to the NSF Office of Inspector General or to the Attorney General.

## PART 689—RESEARCH MISCONDUCT

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AUTHORITY: 42 U.S.C. 1870(a).

SOURCE: 67 FR 11937, Mar. 18, 2002, unless otherwise noted.

### § 689.1 Definitions.

The following definitions apply to this part:

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.

(1) *Fabrication* means making up data or results and recording or reporting them.

(2) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

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(3) *Plagiarism* means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

(4) *Research*, for purposes of paragraph (a) of this section, includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals.

(b) *Research misconduct* does not include honest error or differences of opinion.

### § 689.2 General policies and responsibilities.

(a) NSF will take appropriate action against individuals or institutions upon a finding that research misconduct has occurred. Possible actions are described in § 689.3. NSF may also take interim action during an investigation, as described in § 689.8.

(b) NSF will find research misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An “inquiry” consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An “investigation” is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

(c) A finding of research misconduct requires that—

(1) There be a significant departure from accepted practices of the relevant research community; and

(2) The research misconduct be committed intentionally, or knowingly, or recklessly; and

(3) The allegation be proven by a preponderance of evidence.

(d) Before NSF makes any final finding of research misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and